

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

Section

70.01: Purpose and Authority

70.02: Definitions

70.03: Compliance Certification Requirements

70.04: Violations of 310 CMR 70.00

70.01: Purpose and Authority

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring ~~a facility-wide, performance-based compliance certification. ERP facilities or units to submit a performance based compliance certification to the Department.~~

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), c. 21A, §§ 2, 13 and 16, c. 21C (the Hazardous Waste Management Act), c. 111, §§ 142A through 142M (the Massachusetts Clean Air Act) and c. 111 § 150A (the Solid Waste Management Act).

70.02: Definitions

The definitions found in 310 CMR 70.02 ~~serve only for the purposes of enforcing~~ are for use only in the compliance certification requirements contained in 310 CMR 70.00 and are not intended to ~~displace the existing~~ replace the definitions of those terms in the underlying standards.

Certification means the certification form as prescribed by the Department pursuant to 310 CMR 70.03(4), which includes the certification statement requirements pursuant to 310 CMR 70.03(2)

Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program Facility or ERP Facility (ERP) facility or unit means one of the following:

- (a) a dry cleaner subject to 310 CMR 7.26(10) through (16);
- (b) a photo processor subject to 310 CMR 71.00;
- (c) a printer as defined in 310 CMR 7.26(22);
- (d) a boiler subject to 310 CMR 7.26(30) through (37)-;
- (e) an engine or combustion turbine subject to 310 CMR 7.26(40) through (44); ~~or~~
- (f) a dental facility subject to 310 CMR 73.00-i;
- (g) an industrial user subject to 314 CMR 7.05(2)(g);
- (h) a new sewer extension of less than 1,000 feet in length subject to 314 CMR 7.05(1)(c);
- (i) a new sanitary sewer connection or any increase in flow to an existing sewer connection subject to 314 CMR 7.05(1)(h); or
- (j) an industrial wastewater holding tank subject to 314 CMR 18.00.

ERP Sector means all ERP facilities or units of one type.

Operator means the person responsible for the over-all operation of an ERP facility or unit.

Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility or unit, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility or unit; or
- (b) For a partnership ~~or sole proprietorship~~: a general partner with the authority to bind the partnership or the proprietor, respectively; or
- ~~(c)~~ (d) For a sole proprietorship; the sole proprietor; or
- ~~(e)~~ (d) For a municipality, state, federal, or other public agency including any legislatively-created authority, board, commission, district, etc.: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(4), including but not limited to 310 CMR 7.00, 310 CMR 30.00, 310 CMR 71.00, 310 CMR 72.00, 310 CMR 73.00, 314 CMR 3.00, 314 CMR 5.00, or 314 CMR 12.00, requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

~~(1) Certification. Effective June 27, 2003 each owner and/or operator of an ERP facility or an industrial wastewater holding tank shall submit to the Department an initial certification pursuant to 310 CMR 70.03(2) establishing the owner and/or operator's status as an ongoing certifier and thereafter file an annual compliance certification no later than the schedule set forth in 310 CMR 70.03(6), or as required pursuant to 310 CMR 70.03(4).~~

(1) Schedule for Submission of Compliance Certification Form.

~~(a) The owner or operator of each ERP facility or unit shall submit a certification in accordance with 310 CMR 70.03(2) and thereafter shall submit, as applicable, a periodic compliance certification in accordance with the schedule set forth herein for the specific type of ERP facility or unit.~~

~~(b) New ERP Facilities or New Industrial Wastewater Holding Tanks, Recommencement of ERP Facility Operation, and Transfer of Ownership. The owner or operator of each ERP facility or unit shall submit a compliance certification in accordance with 310 CMR 70.03(1), and (2) W within 60 days of:~~

~~1. the commencement of operation of a new ERP facility or unit; except for boiler(s) subject to 310 CMR 7.26(30) that must submit a certification in accordance with the schedule in 310 CMR 7.26(32);~~

~~(ii) 2. the recommencement of operation of an ERP facility or unit for which no certification was submitted during the year prior to recommencement; except for boiler(s) subject to 310 CMR 7.26(30) that must submit a certification in accordance with the schedule in 310 CMR 7.02(3)(m).~~

or

~~(iii) 3. acquiring an ERP facility or unit unless exempted from this requirement pursuant to 314 CMR 7.17(1)(c) each owner and/or operator of the ERP facility shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2).~~

~~(c) an annual compliance certification is required to be filed annually after the initial certification. If a periodic compliance certification is required, then the owner or operator of the ERP facility or unit shall submit the compliance certification by the end of each certification period unless a statement of non-applicability is submitted to the Department on a form approved/prescribed by the Department.~~

~~(d) For transition purposes, effective June 27, 2003 all initial certifications or annual compliance certifications timely filed by September 15, 2002 or filed in the period of September 16, 2002 through September 15, 2003, shall establish the owner and/or operator's status as an ongoing certifier under 310 CMR 70.00. Notwithstanding 310 CMR 70.03(1)(a) and (4b), a photo processor's holding a permit from the Massachusetts Water Resources Authority pursuant to 360 CMR 10.000 are is deemed to hold the equivalent of an ERP certification and is not required to file a initial certification or annual periodic compliance certification pursuant to 310 CMR 70.00 and 71.00, but such a photo processor's are is required to pay an annual compliance fee to the Department pursuant to 310 CMR 4.00.~~

~~(e) A P photo processors which is located in the service area of the Massachusetts Water Resources Authority that and which hauls or ships photo processing waste off-site are is required to file a initial periodic certification or annual compliance certification pursuant to 310 CMR 70.00 and 71.00.~~

~~(f) Owners or operators of the following types of ERP facilities or units shall submit a periodic compliance certification forms to the Department by September 15th of each year except as provided in 310 CMR 70.03(h) below:~~

- ~~1.(i)~~ dry cleaners subject to 310 CMR 7.26(10) through (16);
- ~~2.(ii)~~ photo processors subject to 310 CMR 71.00; and
- ~~3.(iii)~~ printers subject to 310 CMR 7.26(20) through (29).

(g) The owner or operator of the following types of ERP facilities or units shall submit a periodic or one-time compliance certification in accordance with the schedules below:

1. The owner or operator of a facility with boilers subject to 310 CMR 7.26(30) shall submit a one-time certifications in accordance with the schedule set forth in 310 CMR 7.26(32).
- ~~(ii) 2. The Owners and/or operators of a industrial wastewater holding tanks shall submit to the Department a one-time certification forms in accordance with the schedule and conditions set forth in 314 CMR 18.11.~~
3. The owner or operator of a dental facility subject to 310 CMR 73.00 shall submit a certification in accordance with the schedule and conditions referenced in 310 CMR 73.07.
4. An industrial user subject to 314 CMR 7.05(2)(g) and discharging to a non-IPP POTW, as defined in 314 CMR 7.00, shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(2).
5. The initial owner or operator of a new sewer extension of 1,000 feet or less in length subject to 314 CMR 7.05(1)(c) shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).
6. An owner or operator of a new sanitary sewer connection subject to 314 CMR 7.05(1)(h) shall submit a one-time certification forms in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).
7. An owner or operator of an existing sanitary sewer connection with an increase in flow subject to 314 CMR 7.05(1)(h), shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).
8. An owner or operator of an engine or combustion turbine subject to 310 CMR 7.26(40) through (44) shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 7.26.

(h) The Department may determine a schedule, less frequently than the schedule in 310 CMR 70.03(1)(f), for submission of periodic compliance certifications, based on the following criteria:

1. the size, composition and activities of the ERP sector;
2. the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector;
3. the degree of compliance with established regulatory requirements by the ERP sector;
4. the degree of control over the environmental and public health aspects of activities by the ERP sector; and
5. any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector.

The Department will notify the public and affected businesses by publishing a notice in the Mass Environmental Policy Act Monitor and may also notify an ERP sector through industry trade associations, the Department's website and other appropriate cost-effective methods of changes in the ERP sector's certification schedule.

~~(2) Certification Statement. (5) Certification Form. Each initial certification and each annual compliance certification required pursuant to 310 CMR 70.03~~The Responsible Official for each ERP facility or unit shall submit a compliance certification. Each compliance certification shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or unit is subject. The certification form may include specialized forms for specific categories of ERP facilities or holding tanks, units, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all applicable forms—applicable including but not limited to forms which. The compliance certification shall:

- (a) state whether the ERP facility or unit is in compliance with the applicable standards as listed on the certification form;
- (b) identify the requirements in violation any violations that occurred and the date of such violations within the certification period prior to the due date of the certification statement -including, but not limited to, any notifications required pursuant to MGL c. 21E, § 7 and 310 CMR 40.0300 (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to 310 CMR 7.02(6) (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520 (hazardous waste contingency plans) and the terms and conditions of any permits issued by the Department; and

(c) state what the facility owner/operator will do to return to compliance; and the date by which compliance will be achieved; and

(d) include the following statement: ~~Each responsible official providing information for an ERP facility is required pursuant to 310 CMR 70.03(1), to make the following certification~~ "I, [name of responsible official], attest under the pains and penalties of perjury:

(i) 1. that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;

(ii) 2. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;

(iii) 3. that systems to maintain compliance are in place at the facility or unit and will be maintained even if processes or operating procedures are changed; and

(iv) 4. that I am fully authorized to make this attestation on behalf of this facility or unit. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

70.04: Violations of 310 CMR 70.00

It shall be a violation of 310 CMR 70.00 for any person to:

(1) fail to submit a timely certification pursuant to 310 CMR 70.03~~(1)~~;

(2) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;

(3) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;

(4) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR 70.0~~23~~;

(5) fail to comply with the applicable standards; or

(6) violate any other provision of 310 CMR 70.00.

The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§ 26 through 53 (Massachusetts Clean Waters Act), c. 21A §§ 2, 8, 13 and 16, c.21C (Hazardous Waste Management Act), c. 111 §§ 142A through 142M (Massachusetts Clean Air Act), and c. 111, § 150A (Solid Waste Management Act), in order to obtain full compliance with all requirements applicable to ERP facilities and units, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

REGULATORY AUTHORITY

310 CMR 70.00: M.G.L. c. 21, §§ 26 through 53; c. 21A, §§ 2, 13 and 16; c. 21C and c. 111, §§ 142A through 142M and 150A.

(PAGES 2465 THROUGH 2484 ARE RESERVED FOR FUTURE USE.)